

MEMORANDUM FOR: General Counsel

22 October 1953

SUBJECT : Indications of Legalistic Approaches to Definition of Covert Activities

OGC HAS REVIEWED.

25X1A 1. Sometime last week [REDACTED] Chief of the Plans Staff, FI, called
25X1A to advise that he had gotten some indication that the Department of the Army
was attempting to argue the definition of "agreed activities" as well as
"covert activities" on a legal basis. [REDACTED] stated that it was alleged
that the Army JAG was doing some study on this subject. As you know, in the
past there have been some attempts by certain of the military departments to
approach the NSC directives on this subject from a legalistic standpoint. If
at any time in the future you are seeing The Judge Advocate General you might
sound him out as to whether any such study is being conducted.

25X1A 2. Slightly related to the above, was the conversation with [REDACTED] 25X1A
of Staff D, FI. [REDACTED] indicated that there had been a meeting at which
State Department representatives had raised the question that a classified
25X1A agreement with a foreign government might partake of the nature of a treaty
by virtue of being a written agreement. The point was not pressed by them
but [REDACTED] wanted some confirmation of his own viewpoint that such agreements
which concerned his activities were in essence no different than any other
agreements between CIA and the intelligence services of other nations and
were not in any way to be considered as a treaty or legally binding on the
parties. I assured him that was the general view taken by the Office of the
General Counsel and that generally the courts had held that the conduct of
foreign affairs including the subjects of espionage and counter-espionage
are not subjects for either judicial or congressional intervention but were
matters of the Department or Agency concerned in the Executive.

25X1A 3. [REDACTED] next point concerned the question raised by another
security agency of the U. S. Government which stated that by virtue of NSCID-9
it had some authority with respect to dissemination of information collected
by CIA. It can be argued, of course, that NSCID-9 does conflict with certain
of the fundamental principles set forth in NSCID-5. However, no such directive
can override the provisions of law relating to the protection of intelligence
25X1A sources and methods. [REDACTED] was satisfied after some discussion on both of
the above points and stated he was glad to get some confirmation of his own
viewpoint.

4. The above might indicate a simple problem of guardhouse lawyers or
it might indicate some serious studies relating to definition of terms and
jurisdictions.

25X1A

[REDACTED]
Executive Officer, DD/A